

**SOUTHERN LEHIGH SCHOOL DISTRICT
NEW ELEMENTARY SCHOOL**

**ASBESTOS, PCB AND LEAD ABATEMENT
AND
INDOOR AIR QUALITY TESTING
PROFESSIONAL SERVICES AGREEMENT**

This Agreement made this _____ day of _____ 2015, by and between the Southern Lehigh School District, located at 5775 Main Street, Center Valley, PA 18034, hereinafter referred to as the "Owner," and Element Environmental Solutions, Inc. hereinafter referred to as the "Abatement Professional."

The Owner is proceeding with construction of a new Elementary School and the demolition of the existing 51,600 square foot Hopewell Elementary School (constructed in 1970) located at 4625 W. Hopewell Rd, Center Valley, PA 18034. (hereinafter, the "Project").

The Construction Manager for the Project is the firm of D'Huy Engineering, Inc., One East Broad Street, Suite 310, Bethlehem, PA 18018 (hereinafter, the "Construction Manager"). The Project Architect is KCBA Architects (hereinafter, the "Architect").

The Owner and the Abatement Professional agree as set forth below:

Article 1 - Scope of Services

1.1 The Owner designates the Abatement Professional as its consultant to perform the professional services identified in this Agreement ("Services"). The Abatement Professional's Services shall include all activities described in the Request for Proposal for Asbestos, PCB and Lead Abatement, and Indoor Air Quality Testing Professional Services issued in February 2015 (the "RFP") for the Project, including any services required in accordance with the Project drawings and specifications, and shall continue until the completion of the Project, unless terminated as provided for in Article 8 below.

1.2 The Abatement Professional accepts the relationship of trust and confidence established between the Abatement Professional and the Owner by this Agreement. Abatement Professional covenants with the Owner to furnish the Abatement Professional's knowledge, skill and professional judgment, consistent with and meeting or exceeding that ordinarily and customarily accepted within the industry, and to cooperate with the Architect, the Construction Manager, other consultants and professionals, and the trade contractors in furthering the interest of the Owner.

1.3 Abatement Professional agrees to provide professional services in accordance with this agreement, the RFP, and the Proposal submitted in February 2015 (the "Proposal"), appearing as Attachment A hereto. Any conflicts among such documents shall be resolved in the following priority: (1) this Agreement; (2) the RFP; and (3) the proposal.

1.4 The Abatement Professional shall meet and satisfy the requirements set forth in the Project Specifications in performing the Services. All services must be performed by an individual qualified and registered to perform such services in connection with the Project.

1.5 Abatement Professional has fully reviewed the RFP and project scope and has performed its own estimates and takeoffs of the extent of the Services that will be required. Owner bears no responsibility for the Abatement Professional's fee.

1.6 Abatement Professional agrees to provide professional services for the costs set forth in this Agreement and Attachment A.

1.7 Abatement Professional agrees to provide any additional abatement and/or testing services that are necessary for the Project at prices to be agreed upon by the Owner and the Abatement Professional by written amendment to this Agreement. Abatement Professional is not

authorized to perform any such additional abatement, testing, or laboratory services without the expressed prior written approval of the Owner or its representatives.

1.8 Abatement Professional will, at the time that it receives direction to proceed, promptly designate the personnel who will participate in the furnishing of Services under this Agreement. All appointments and replacements made by the Abatement Professional of any such individuals are subject to the prior written approval of the Owner and Construction Manager, which approval shall not be withheld unreasonably.

1.9 Communications between the Abatement Professional and the Owner shall ordinarily occur through the Construction Manager, or in appropriate circumstances directly with the Owner, or through other consultants and individuals designated by the Construction Manager.

1.10 The terminology “day” shall mean calendar day, unless otherwise specifically designated.

1.11 The phrase, “Term of this Agreement” shall mean the period of time that this Agreement is in effect.

Article 2 - Basic and Additional Services Offered

2.1 Basic Services shall include the following:

2.1.1 Abatement Professional shall perform the Services in accordance with this Agreement, including Section 1.4, during the period of time following the selection of the Abatement Professional, prior to the execution of this Agreement, and shall continue until the completion of the Project.

2.1.2 Abatement Professional agrees to submit all test results, reports, and data sheets as required in the RFP and to provide draft reports for review by Owner.

2.1.3 Abatement Professional agrees to advise the Construction Manager promptly of instances where the work differs from that in the RFP or that is required in order to properly provide the services.

2.1.4 Abatement Professional agrees to attend meetings with Owner, Architect, and Construction Manager to review scope of work before, during, and after the work is performed.

2.2 Additional services may include the following:

2.2.1 Abatement Professional agrees to assist with claims avoidance and claims negotiation and resolution incidental to Abatement Professional's duties as an additional service if requested in writing by the Owner.

Article 3 - Owner's Duties

3.1 The Owner shall provide all available information regarding the Owner's requirements for the Project, including but not limited to design documents and construction contract documents.

3.2 Abatement Professional will be furnished without charge all copies of drawings and specifications reasonably necessary for the execution of the work subject to this Agreement.

3.3 The agreements, plans, specifications and information required by the above paragraphs shall be furnished with reasonable promptness at the Owner's expense and Abatement Professional shall be entitled to rely upon the accuracy and completeness thereof. However, should Abatement Professional observe, note or discover any errors, omissions, or deficiencies through its activities under this Agreement during the course of the Project, Abatement Professional shall promptly notify the Construction Manager and report the observations to them.

3.4 The Owner shall provide itself, or through its construction contractors, property insurance for the Project, and specifically will furnish adequate coverage for general liability, property and other casualty losses in accordance with Article 7 below. Nothing herein requires that the Abatement Professional be identified as an additional insured under any such policy or policies.

Article 4 - Trade Contracts

4.1 All construction work on the Project shall be performed by construction contractors under trade contracts that are in compliance with applicable law. The Abatement Professional will perform no construction work.

4.2 Trade contracts will be between the Owner and other construction contractors.

Article 5 - Abatement Professional's Fee

5.1 In consideration of the performance of Services under this Agreement, the Owner agrees to pay Abatement Professional its fees on the basis of the Proposal for rates which include reimbursable expenses, appearing here as Attachment A.

Part 1 – Asbestos, PCB, Lead, and Other Building Environmental Issues Surveys

A	Articles 1.1 through 1.3: Asbestos, Lead-based Paint, PCB and Mercury Investigations	\$2,900.00
B	Article 1.4: Bid Documents and Bidding Phase	\$3,800.00
C*	Article 1.5: Weekly estimate for construction phase environmental remediation testing & compliance monitoring for all environmental work: \$2,600.00/week multiplied by 4 weeks. Daily estimate for construction phase environmental remediation testing & compliance monitoring for all environmental work: \$520.00/day.	\$10,400.00
	Lump Sum Cost for A, B, and C	\$17,100.00

Part 2 – Indoor Air Quality Testing

A	Article 2.1.a: Baseline IAQ Testing	\$2,850.00
B	Article 2.1.b: Construction Phase IAQ Testing	\$2,850.00

C	Article 2.1.c: Baseline IAQ Testing Before Occupancy	\$4,100.00
	Lump Sum Cost for A, B, and C	\$9,800.00
D	Testing for three (3) rounds of 5 bacteria and 5 fungal samples	\$4,500
	**Total	\$31,400.00

***Consultant will only be paid for actual time required once phasing and construction timelines are established.**

**** Total amount to be adjusted based on actual services performed and in accordance with above unit prices.**

5.2 Abatement Professional agrees that it will impose no additional charges for the services of its employees or consultants, or for out-of-pocket costs or expenses of any kind incurred in connection with Services provided under this Agreement.

5.3 The rates and reimbursable expenses set forth in this Agreement and the Proposal hereto shall remain in effect for the Term of this Agreement.

5.4 Fees for the services rendered hereunder may be billed by Abatement Professional monthly, or with Owner’s permission, less frequently. All invoices shall be appropriately and adequately documented.

5.4.1 Invoices for services shall include the name of the individual, his or her classification, the hours expended, the dates of the services, and the applicable rates. Invoices seeking payment of reimbursable expenses shall include itemization and substantiation.

5.4.2 Invoices shall include for each test and other service descriptions of each unit-price service being billed, the number of units provided, and applicable rate.

5.5 Abatement Professional agrees that the total billed for its services, in complete performance of the services to be rendered by the Abatement Professional under this agreement, shall be in accordance with the amounts submitted for each phase of work or activity as listed on the “Request for Proposal Form” and the Request for Proposal and shall not exceed

the amount set forth in paragraph 5.1 above. Abatement Professional agrees to allocate the time of its personnel and the expenses of their activities so as to assure that the total paid by Owner for the Services described generally in this Agreement is within this amount. It is further agreed that all invoices shall be based on the total fee and any unit prices and fees listed in the proposal submitted (Attachment A) and the unit prices and fees include all reimbursables.

5.6 The Owner reserves the right to propose to the Abatement Professional that it provide Additional Services in connection with the Project. Any addition, change or modification to this Agreement shall be of no force or effect until a written modification is prepared and signed by the Owner and the Abatement Professional.

5.7 Additional Services shall be billed in accordance with the Proposal, appearing here as Attachment A, listing the rates for the Abatement Professional's personnel and per-unit prices for laboratory services. These rates set forth in Attachment A shall remain in effect for the Term of this Agreement.

5.7.1 All invoices for services shall include a description of the services provided.

5.8 The cost of the premiums for all insurance which the Abatement Professional is required to maintain by this Agreement is to be paid by Abatement Professional and shall not be included by Abatement Professional in its invoices as a cost.

Article 6 - Changes in the Project

6.1 The Owner, without invalidating this Agreement, may order changes in the contracts for construction and the Work on the Project within the general scope of the Owner's building and design development program consisting of additions, deletions, changes in the site and other revisions, all of which shall remain within the scope of the Basic Services performed under this Agreement. Abatement Professional's fees, rates of payment for hourly services and

rates of reimbursement for out-of-pocket expenses shall not be affected by any such change in the Work.

Article 7 - Insurance and Indemnification

7.1 (A) Abatement Professional shall take out and maintain Commercial General Liability insurance that will protect the Abatement Professional and all of its subconsultants and subcontractors from claims for death, injury or property damage which may arise from services and activities performed under this Agreement. Such insurance shall be provided via standard Insurance Services Office occurrence form CG 00 01 01 96 (or its equivalent) issued by insurers authorized to do business in the Commonwealth of Pennsylvania. The limits of this policy shall be at least:

- (1) \$1,000,000 Each Occurrence
- (2) \$2,000,000 General Aggregate
- (3) \$1,000,000 Personal & Advertising Injury
- (4) \$1,000,000 Products/Completed Operations Aggregate

This insurance to be purchased by Abatement Professional shall include the following:

- (1) Premises Operations
- (2) Products and Completed Operations
- (3) Contractual Liability
- (4) Personal Injury Liability
- (5) “Waiver of Transfer Rights of Recovery against Others” (Insurance Services Office endorsement #CG2404), naming Owner, Architect, Construction Manager and consultants on its schedule.
- (6) “Amendment - Aggregate limits of Insurance (Per Project)” (Insurance Services Office endorsement #CG2503) naming “Southern Lehigh School District – Hopewell Elementary School” on its schedule.

(7) “Additional Insured - Designated Person or Organization” (Insurance Services Office endorsement #CG2026) naming Owner, Architect, Construction Manager and consultants.

(8) “Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured” ([Insurance Services Office endorsement #CG2032] naming Construction Manager, Architect and their subconsultants).

7.1 (B) Abatement Professional shall maintain commercial Automobile Liability insurance for owned, hired, and non-owned vehicles with a limit of liability of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.

7.1 (C) Abatement Professional shall take out and maintain Workers Compensation insurance, including employer’s liability and any other insurance as required by law in the Commonwealth of Pennsylvania. The limits for Employers Liability coverage shall be at least \$300,000 for each category: Bodily Injury Each Accident; Disease Each Person; Disease Policy Limit.

7.1 (D) Abatement Professional shall maintain Commercial Umbrella Liability insurance on an occurrence form that provides excess coverage over its Commercial General Liability (including Products & Completed Operations Liability), Auto Liability, Professional Liability and Employers Liability coverages. The per-occurrence limit of protection on this policy shall be at least \$5,000,000. This insurance shall include the following:

(1) No exclusion barring suits between insureds.

(2) Language specifying that this insurance shall follow the underlying Commercial General Liability policy with respect to “Additional Insureds”.

7.1 (E) Abatement Professional shall maintain Professional Liability insurance covering professional services with a limit of liability of at least \$1,000,000. Such insurance shall be written on a per-occurrence basis.

7.1 (F) Except as specified in 7.1(E), all insurance shall be effective from the date of execution of this Agreement until final payment.

7.1 (G) Insurance companies providing policies or bonds described in this section must have an A.M. Best Co. rating of A- or higher.

7.1 (H) Abatement Professional shall provide Owner with Certificates of Insurance evidencing the coverages described in this section. Such certificates shall be provided contemporaneously with the execution of this Agreement and appended hereto as Attachment B, and shall provide an explicit written assurance of at least thirty (30) days written notice to Owner prior to any material changes, cancellation or non-renewal. All notifications by the insurance carrier are to be sent to Jeremy G. Melber, Director of Business Services, Southern Lehigh School District, 5775 Main Street, Center Valley, PA 18034.

7.1 (I) There will be no separate or additional payment for insurance expenses, and the cost for insurance described in this document shall be Abatement Professional's sole responsibility.

7.2 (A) Abatement Professional agrees to indemnify, defend and hold harmless the Owner, Architect, Construction Manager, consultants, and the Commonwealth of Pennsylvania, and their officers, officials, representatives, agents and employees from and against all claims, damages, losses and expenses, including but not limited to, attorneys' fees arising out of or resulting from the negligence, recklessness, or intentional misconduct of Abatement Professional or its breach of this Agreement.

7.2 (B) With respect to any claim resulting from injury or loss to an employee of Abatement Professional, the Abatement Professional agrees to indemnify and hold harmless Construction Manager, Architect and Owner from the entire amount of such claim, including liability for injury or loss caused by the negligent acts or omissions of Construction Manager, Architect and Owner which result in harm to such employee and Abatement Professional hereby expressly waives any provision of any applicable workmen's compensation act which would otherwise provide the Abatement Professional immunity from such indemnity.

7.3 Abatement Professional hereby certifies that it has accepted the provisions of the Workers' Compensation and Occupational Disease Acts, as amended and supplemented, for the officers and employees of Abatement Professional, and that it has insured its liability thereunder in accordance with the terms of said Acts, as evidenced by the original certificate of insurance it has provided to Owner.

Article 8 - Termination

8.1 If the Owner fails to make payment for more than sixty (60) days following the rendering by Abatement Professional of a properly documented and supported invoice for fees due and owing, Abatement Professional may, upon thirty (30) days' written notice to the Owner and the Construction Manager, terminate this Agreement and recover from the Owner payment of the fees earned to date.

8.2 Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated for the convenience of the Owner upon seven (7) days written notice to the Abatement Professional. If the Owner elects to terminate this Agreement under this Section, Abatement Professional shall be entitled to payment for satisfactory services rendered under the

Agreement up to the time of termination, based on the unit costs, hourly rates, and services rendered.

8.3 If, through any cause, the Abatement Professional shall fail to fulfill on a timely basis and in a proper manner its obligations under this Agreement, the Owner may give Abatement Professional three (3) days to correct the deficiency. If Abatement Professional fails to correct the deficiency to the satisfaction of the Owner, the Owner may terminate this Agreement by giving written notice to the Abatement Professional, setting forth the reasons for and the effective date of such termination.

Article 9 - Additional Terms

9.1 Neither the Owner nor the Abatement Professional shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

9.2 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania where the Project is located and the venue of any dispute arising hereunder shall be the Court of Common Pleas of Northampton County, Pennsylvania.

9.3 This Agreement represents the entire understanding between the Owner and the Abatement Professional, and supersedes all prior negotiations, representations, or Agreements, except otherwise provided herein.

9.4 Abatement Professional shall fully obey and comply with all laws, ordinances, and regulations which are or shall become applicable to the Project and the Services performed under this Agreement.

9.5 Abatement Professional shall maintain and preserve all data, records, and documents pertaining to the Project for a period extending until five (5) years after the date of final

payment of fees to Abatement Professional and, during that period, shall produce the aforementioned information upon request to the Owner and within a reasonable period of time.

9.6 Abatement Professional agrees that it neither has nor will acquire any public or private interest, direct or indirect, which conflicts in any manner with the performance or obligations under this Agreement.

9.7 The Services rendered by the Abatement Professional or its agents under this Agreement are not rendered as an employee of the Owner and the amounts paid do not constitute compensation or wages paid to an employee. Abatement Professional is not an agent of the Owner, but rather is an independent contractor, and the Owner assumes no liability or responsibility for the actions of the Abatement Professional under this Agreement.

9.8 During the pendency of any dispute hereunder, Abatement Professional shall continue to carry out its responsibilities under this Agreement and the Owner shall continue to make all undisputed payments due and owing to Abatement Professional.

9.9 Pennsylvania Human Relation Act 222 and Other Applicable Laws:
The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et. Seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The Abatement Professional shall comply with the provisions of this Act and all other applicable federal, state, and local laws and regulations.

9.10 HEALTH AND SAFETY

The Professional shall comply with the provisions of the Occupational Safety and Health Administration, Federal Act 91-596 of December 29, 1970, and with any other safety and

health regulations for district in which the Work is performed.

9.11 IDENTIFICATION

The Abatement Professional shall supply the Owner with satisfactory state and federal criminal history reports and child abuse clearances for all employees, agents and subcontractors who will be on the Owner's property. The original clearances must be presented to the Owner prior to each employee, agent or subcontractor coming on the Owner's property. All such clearances shall be dated no earlier than one year prior to the date of presentation to the Owner. The Owner shall retain a copy of all such clearances in its file. Notwithstanding any other provision of this Agreement, violation of this provision may constitute grounds for immediate termination of the Agreement by the Owner. Owner specifically reserves the right to reject any person Owner deems unfit to be permitted on school grounds and in proximity to students. Upon written notice from Owner, Professional shall have all such persons removed from the project. Owner's right to declare such person unfit shall not be limited to the required exclusion of persons from school property as set forth in Section 1-111 of the Pennsylvania Public School Code and/or Subchapter C2 of the Child Protective Services Law.

The Owner reserves the right to require all construction employees to be visually identified by the use of badges. In the event this security measure is implemented, the Owner will issue badges to all authorized employees in conjunction with the Professional and record their issuance with names, addresses, etc. Termination of employment of the employees will require the respective badges to be returned to the Owner for record keeping purposes. All employees must wear the badge on the job site. Employees without badges will not be permitted on the premises.

This Agreement executed the day and year first written above.

Attest:

Southern Lehigh School District:

Attest:

Element Environmental Solutions, Inc.:

Title: _____

Attachment A

**Attach Proposal submitted in
response to the RFP and Actual RFP**

Attachment B

**Attach insurance certificates in compliance
with the requirements of Article 7**